

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

May 13, 2010

Lyle W. Cayce
Clerk

No. 09-30989

Summary Calendar

KELVIN WELLS,

Plaintiff-Appellant

v.

TIMOTHY TRAYNOR,

Defendant-Appellee

Appeal from the United States District Court
for the Middle District of Louisiana
USDC No. 3:09-CV-649

Before GARZA, CLEMENT, and OWEN, Circuit Judges.

PER CURIAM:*

Kelvin Wells appeals the dismissal of his civil suit against Timothy Traynor. Wells claims that Traynor caused the death of his father as retaliation for Wells's whistleblowing activities. The magistrate judge construed Wells's complaint as a claim for wrongful death under LA. CIV. CODE art. 2315.2 and recommended dismissal of the claim without prejudice for lack of subject matter jurisdiction, because the defendant was also a resident of Louisiana. Wells did not object to the magistrate's recommendation and the case was dismissed. On

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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appeal, he argues that the death took place onboard the M/V ATLANTIC on November 22, 1997 and that the district court thus had maritime jurisdiction. Even if these allegations would be sufficient to establish the district court's jurisdiction, they were not raised before the district court and are waived on appeal. The judgment of the district court is **AFFIRMED**.